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6 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**
7 **OF THE STATE OF CALIFORNIA**
8

9 In the Matter of the Application of:

10 **Maria E.**

11 Application No. 675718

Precedent Decision No. 02-02

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13 A telephone hearing on this application¹ was held on August 21, 2002, in Sacramento,
14 California, by Richard P. Fisher, Hearing Officer, California Victim Compensation and Government
15 Claims Board (Board).

16 The applicant, Maria E., participated in the hearing via telephone.

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18 **Claim History**

19 The application is based on the sexual abuse of Ms. E.'s two granddaughters, Raylene E. and
20 Rosa E. The application seeks reimbursement for Ms. E.'s mental health counseling expenses. The
21 application was received on October 19, 2001, was recommended for denial on the consent agenda for
22 April 23, 2002, and was appealed.
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27 ¹ This appeal technically applies only to application number 675718, which is based on the victimization of Raylene E. But
28 Ms. E. has also filed application number 675461, which is based on the victimization of Rosa E. Both of
29 Ms. E.'s applications would receive the same analysis as contained in this Proposed Decision and would be subject to the
same findings and determinations made herein.

Summary of Issues

Staff recommended that Ms. E.'s application be denied because she did not appear to qualify as a derivative victim.

Findings of Fact

According to Ms. E.'s testimony, her granddaughters, Raylene E. (DOB April 30, 1996) and Rosa E. (DOB August 8, 1997) were sexually abused by her daughter-in-law's boyfriend, Jerry Gonzalez. Ms. E.'s son, Leo E., and her daughter-in-law had separated before the sexual abuse by Mr. Gonzalez had occurred. Although Raylene E. and Rosa E. would occasionally spend a few weeks or even months visiting their mother and Mr. Gonzalez in a nearby city, Raylene E. and Rosa E. have lived in the same household as Ms. E. their entire lives. Ms. E. convincingly and credibly testified that she has always been the girls' primary caregiver, taking them to school and to their medical appointments, and providing them with food, clothing, and continual love and nurturing. It is found that to the extent Raylene E. and Rosa E. have enjoyed a place one would call a "home," that place has been the household they have always shared with their grandmother, Ms. E..

The abuse came to light after Raylene E. and Rosa E. had returned from a visit to their mother's and Mr. Gonzalez's house. Rosa E. began to speak of Mr. Gonzalez's "ding-a-ling," which Ms. E. determined referred to Mr. Gonzalez's penis. Rosa E. began to wet the bed for the first time in her life. She started biting her fingernails, spoke of her mother putting baby powder on her private parts and taking her underwear off at night before bed. These revelations were very unsettling to Ms. E. so she called the mother and Mr. Gonzalez to ask what was going on. Mr. Gonzalez admitted that he took showers with Raylene E. and Rosa E. but that their mother was always present in the bathroom. He also admitted that Raylene E. and Rosa E. had slept in his bed on occasion. In July 2001, Ms. E. called the authorities to report the suspected abuse of her granddaughters.

According to the police report concerning Rosa E., the sexual assault team concluded that the findings of the examination were suspicious and that sexual abuse of Rosa E. was "likely." The sexual assault examination of Raylene E. was inconclusive. Nonetheless, physical custody of Raylene E. was given to Ms. E. pending a criminal investigation into the abuse. Mr. Gonzalez was not allowed to be

1 in the same house with either Raylene E. or Rosa E. during the pendency of the criminal investigation.
2 Ultimately, physical custody of the girls was awarded to Mr. E., their natural father. Raylene E., Rosa
3 E. and Mr. E. continue to live with Ms. E..

4 According to a letter submitted to the Board by Psychologist Melissa Bailey Arizpe, Raylene
5 E., Rosa E. and their father are all undergoing counseling with her. According to the psychologist,
6 Raylene E. and Rosa E. were removed from their mother's home after it was found that Mr. Gonzales
7 had repeatedly abused both Raylene E. and Rosa E. The psychologist also confirms that Ms. E. acts as
8 the girls' primary caretaker, taking them to school, medical appointments, social activities, and
9 counseling sessions. The psychologist concludes that Ms. E. is very affected by the nightmares and
10 other signs of post-traumatic symptoms that Raylene E. and Rosa E. are experiencing as a result of the
11 sexual abuse.

12 13 **Determination of Issues**

14 The Board shall approve an application for assistance if a preponderance of the evidence
15 shows that as a direct result of a crime the victim incurred an injury that resulted in a pecuniary loss.
16 (Gov. Code, § 13964(a).) Ms. E. has the burden of proof on all issues necessary to establish her
17 eligibility as a derivative victim of a qualifying crime. (Gov. Code, § 13964(a); Cal. Code Regs., tit.
18 2, § 647.32.)² A "qualifying crime" is defined as a crime that results in injury to the victim, threat of
19 injury to the victim, or death to the victim. (Reg., § 649(a)(18).) Because Ms. E. seeks compensation
20 as a derivative victim, the first issue for determination is whether a preponderance of the evidence
21 indicates that Raylene E. and Rosa E. would qualify as victims of crime.

22 The testimony of Ms. E. regarding how the sexual abuse came to light was very credible. The
23 police reports indicate that, at least as regards Rosa E., sexual abuse was likely. Custody of Raylene
24 E. and Rosa E. was taken away from their mother because of the reported abuse by Mr. Gonzalez.
25 And the treating psychologist reports that the sexual abuse of Raylene E. and Rosa E. by Mr. Gonzalez
26 caused the physical removal of the girls from their mother's home and has created the need for
27 Raylene E., Rosa E. and their father to receive counseling to deal with the ongoing effects of the

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29 ² All regulation citations are to California Code of Regulations, title 2.

1 abuse. It is determined that Raylene E. and Rosa E. would qualify as victims of crime under the
2 Victim Compensation Program. (Gov. Code, § 13960(a)(1).)

3 The next issue for determination is whether Ms. E. qualifies as a derivative victim. A
4 derivative victim is defined, *inter alia*, as a resident of California who was living in the household of
5 the victim at the time of the crime. (Gov. Code, § 13960(a)(2)(B).) The uncontroverted evidence
6 reveals that Raylene E. and Rosa E. have lived in the same household as Ms. E. for their entire lives.
7 And this fact is not changed just because Raylene E. and Rosa E. were sexually abused during the
8 periods of time they spent visiting their mother and Mr. Gonzalez. When the crimes of sexual abuse
9 occurred, Ms. E. was still “living in the household” of Raylene E. and Rosa E. as that phrase is
10 contemplated in Government Code section 13960(a)(2)(B). It is therefore determined that Ms. E.
11 qualifies as a derivative victim.

12 13 **Order**

14 The application is approved. Ms. E. shall be eligible for program assistance for all verified,
15 covered losses.

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17 Date: August 30, 2002

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RICHARD P. FISHER
19 Hearing Officer
California Victim Compensation and
20 Government Claims Board
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Notice of Decision

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12 On September 27, 2002, the California Victim Compensation and Government Claims
13 Board adopted the attached Proposed Decision of the Hearing Officer as its Decision in the above-
14 referenced matter. The Decision became effective on September 27, 2002.
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16 Date: October 2, 2002

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18 CATHERINE CLOSE
19 Chief Counsel
20 California Victim Compensation and
21 Government Claims Board
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